

STEP 1: ARE WATERS OF THE US PRESENT WITHIN THE BOUNDARIES OF THE ACTIVITY?

The first step of the Section 404 compliance process is to evaluate the presence/absence of **waters of the US** through completion of a jurisdictional delineation (JD).

A. Definitions and Examples

In general, waters of the US denotes the Corps' jurisdictional limits under CWA Section 404. The full definition of the term is provided in Title 33 Code of Federal Regulations (CFR) Chapter II, Part 328—Definition of Waters of the United States (Corps 2000; Attachment 1). Three categories of waters of the US are defined in this regulation: territorial seas, **tidal waters**, and **non-tidal waters**.

Waters of the US can also be categorized as tribal waters (occurring on tribal lands), unique waters (classification designated by ADEQ), or other waters (all non-tribal and non-unique waters).

All waters of the US in Arizona (tribal, unique, and other) are non-tidal waters and include but are not limited to:

- § **washes**
- § **rivers** and streams
- § natural ponds
- § **wetlands**
- § certain canals



Waters of the US can also include lakes (wet or dry, including playa lakes), mud and sandflats, **sloughs**, and wet meadows.

B. Jurisdictional Delineation

A JD is the process through which the boundaries and other physical characteristics of a potential waters of the US are evaluated at the site of an activity. The term JD is also used to describe the resulting report, ultimately submitted by EEG to the Corps for their consideration and approval.

EEG has developed a list of required submittal items to be included in all JDs. This list was compiled in coordination with the Corps and is provided as the first portion of Attachment 2 (EEG 2004b). As noted on the list, key components of a JD include (refer to Attachment 2 for the complete list of all required JD components):

- § Aerial photographs of appropriate age and scale
- § Ground photographs with location map
- § Table 1—Wash Summary (EEG 2004d; reformatted for printing and provided as third portion of Attachment 2)

§ Table 2—JD Physical Characteristics & Other Information (EEG 2004d; reformatted for printing and provided as third portion of Attachment 2)

The Corps and EEG have developed a label to be used on JD aerial photographs for all ADOT activities (EEG 2004c). An example, depicting the required information and general format of the label, is provided as the second portion of Attachment 2.

Table 1—Wash Summary (EEG 2004d; third portion of Attachment 2) is coded to identify information required in JDs, and information required in NWP PCN submittals/**Individual Permit** applications. Activity proponents should use the applicable columns of Table 1 when preparing a JD.

It is important to identify the source and date of all documentation and references used to prepare a JD, including aerial photographs, ground photographs, and applicable mapping.

To assist activity proponents in the preparation of JDs in arid and semi-arid areas, the Corps has developed the Final Summary Report: Guidelines for Jurisdictional Determinations for Waters of the United States in the Arid Southwest (Corps 2001). These guidelines are provided for reference as Appendix 1.

It is important to note that specific regulatory requirements apply to wetlands; therefore, JDs of potential waters of the US must clearly differentiate between non-wetland water features and wetlands.

1. Non-Wetland Water Features

An **ordinary high water mark** (OHWM) represents the Corps' jurisdictional limit in a non-wetland water feature. The Corps defines the OHWM as a "...line on the bank or shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line imposed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, or the presence of litter and debris" (Corps 2001). In addition to these five characteristics, EEG also evaluates the presence/absence of sediment deposits, water stains, and exposed roots, as well as the width and depth (cross-sectional area) of the OHWM, when conducting a JD of a non-wetland water feature.



2. Wetlands

Wetlands are defined by the Corps as:

"Those areas that are **inundated** or saturated by surface or **ground water** at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in **saturated soil conditions**. Wetlands generally include swamps, marshes, bogs, and similar areas" (Corps 1987).

The Corps' jurisdictional limit in a wetland is considered to be the **wetland boundary**, defined as “the point on the ground at which a shift from wetlands to non[-]wetlands or aquatic **habitats** occurs. These boundaries usually follow contours” (Corps 1987). The Corps of Engineers Wetlands Delineation Manual provides guidance in evaluating the jurisdictional limits of wetlands and is available on-line at <http://www.nan.usace.army.mil/business/buslinks/regulat/formdocs/wlman87.pdf> (Corps 1987).

JDs of wetlands must be prepared in accordance with this Corps manual.

